

MEMORANDUM

TO: Members, Public Disclosure Commission

FROM: Susan Harris, Assistant Director

DATE: January 17, 2002

SUBJECT: Citizen's Action Letter Against Rick Luther, Christopher Hurst and Kevin Esping

On November 28, 2001, Robert Edelman filed a citizen's action letter under RCW 42.17.400(4) with the Office of the Attorney General and the Office of the King County Prosecutor. The letter notified the Attorney General and the King County Prosecutor that if they fail to commence an action within 45 days, Mr. Edelman intends to bring, in the name of the state, a citizen's action against Rick Luther, Kevin Esping, and Christopher Hurst for alleged violations of RCW 42.17. The 45-day letter was forwarded to the PDC for investigation, which is the normal practice.

The PDC staff has completed its investigation of the issues raised in the citizen's action letter alleging that on or around November 1, 2001, Rick Luther, Kevin Esping, and Christopher Hurst, police officers with the Black Diamond Police Department, violated RCW 42.17.530 by sponsoring political advertising containing false statements of material fact made with actual malice. The political advertisement was a letter to Black Diamond voters opposing 2001 mayoral candidate Barry Kombol.

The PDC staff reviewed the allegations in light of the following statute:

RCW 42.17.530 prohibits a person from sponsoring with actual malice political advertising that contains a false statement of material fact about a candidate for public office. "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity. Any violation must be proven by clear and convincing evidence.

Mr. Edelman alleged that in a letter mailed to Black Diamond voters, Rick Luther, Kevin Esping, and Christopher Hurst included the following material false statements with "actual malice":

- "[The records] detail a long history of contacts with police, criminal justice authorities and courts for assaults by Mr. Kombol on his own family members."
- "These records also document Mr. Kombol being charged with Domestic Violence Assault against his wife on at least three occasions. Other prominent members of the community, including physicians, documented these assaults as well."
- "As mayor, Mr. Kombol would oversee the operations of the Black Diamond Police Department. His conduct demonstrates that he should not hold this position."

Mr. Edelman states that the record shows that accusations of assault made by Mr. Kombol's wife were refuted and all charges of assault were dismissed. He said the sponsors of the ad disregarded this information. Mr. Edelman argues that the ad falsely represents that the contacts with police, criminal justice authorities and courts were "for assaults" by Mr. Kombol rather than "for alleged assaults."

Mr. Edelman also alleged that the sponsors of the ad falsely represented the allegations of assault as "his (Mr. Kombol's) conduct." Mr. Edelman states that "the file" (Barry and Cathy Kombol divorce proceedings) contains convincing evidence that the charges made by Mrs. Kombol of domestic violence were false. Mr. Edelman states that it was reckless for the sponsors to disregard these documents and refer to the Mr. Kombol's alleged conduct as "his conduct."

Staff's investigation found:

- that Mr. Kombol was cited on three occasions for Domestic Violence Assault and the King County Prosecutor filed a formal complaint for two of the three occasions.
- that members of the community, including at least two physicians, provided declarations to the court during divorce proceedings documenting the assaults.
- that the statement, "His conduct demonstrates that he should not hold this position" is a matter of opinion and not a statement of material fact.

Staff was not provided with any evidence that the charges against Mr. Kombol were dismissed and a review of the Kombol dissolution file made no reference to the outcome of the charges.

Mr. Edelman alleged that the ad falsely claims that its sponsors reviewed the public documents on which they based their conclusion "at the source" to "establish their authenticity." Mr. Edelman stated that Mr. Esping told him he did not review the documents "at the source." Mr. Edelman asserts that this is significant because, in his view, Mr. Esping is highly respected in the community and his signature on a letter condemning Mr. Kombol carried great weight.

Staff's investigation found:

- that the letter stated "To verify their authenticity, we viewed these public documents at their source..."
- that this statement is not a material fact. Staff found that two of the three sponsors viewed the documents "at their source" on behalf of the group.

Mr. Edelman also included several statements in his citizen's action letter that were not relevant to the issue of whether the ad in question contained a false statement of material fact made with actual malice.

After a careful review of the alleged violations and relevant facts, staff found no reason to believe that the ads cited in the complaint contained a false statement of material fact made with actual malice, and seeks the concurrence of the Commission to dismiss Mr. Edelman's complaint against Rick Luther, Kevin Esping, and Christopher Hurst.